APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1756

UNITED STATES OF AMERICA,

Petitioner

—*v.*—

HELEN MITCHELL, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR WRIT OF CERTIORARI FILED MAY 23, 1979
CERTIORARI GRANTED JUNE 18, 1979

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UNITED STATES OF AMERICA,

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—*v.*—

HELEN MITCHELL, ET AL.

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COMPLETE DOCKET ENTRIES OF COURT OF CLAIMS IN DOCKET NO. 772-71

DATE	PROCEEDINGS
October 18, 1971	Petition filed.
Oct 18 1971	Filing fee of $10 paid by plaintiffs.
Oct 18 1971	Plaintiffs' motion to waive filing fees (in excess of $10.00) filed. Copies (2) to deft. GRANTED JAN 24 1972, see order.
Oct 18 1971	Plaintiffs' motion for order providing for giving of notice of this action; and for consolidation of hearing (with the motion in 102-71) filed. Copies (2) to deft. GRANTED JAN 24 1972, see order.
Oct 29 1971	See case No. 760-71 for court order referring case to Commissioner. vacated 12/18/72
Nov 3 1971	Defendant's motion for leave to file opposition to motion re notice filed. Copies (2) to atty. ALLOWED NOV 19 1971 and filed.
Nov 15 1971	Defendant's motion for more definite statement filed. Copies (2) to atty. ALLOWED NOV 30 1971.
Nov 19 1971	Defendant's opposition to plaintiffs' motion for order providing for the giving of notice of this action filed. Copies (2) to atty.
Dec 30 1971	Plaintiffs' more definite statement filed. Copies (13) to deft.
Jan 18 1972	Defendant's motion for extension of time (to March 16, 1972) to answer, etc. filed. Copies (2) to atty. ALLOWED FEB 1 1972.
Jan 24 1972	Court entered order (in this, 773-71, 774-71 and 775-71) granting motions for an order providing for giving of notice, granting plaintiffs motions to waive filing fees, returning each case to the trial commissioner

DATE	PROCEEDINGS

for further appropriate proceedings and denying without prejudice plaintiffs' motions to consolidate with Ct. Cl. No. 102-71 for oral argument, as set forth in the order. Copy to parties.

Mar 10 1972 Defendant's motion for extension of time (to May 15, 1972) to answer, etc. filed. Copies (2) to atty. ALLOWED MAR 21 1972.

May 9 1972 Defendant's motion for extension of time (to June 30, 1972) to answer, etc. filed. Copies (2) to atty. ALLOWED MAY 23 1972.

Jun 22 1972 Defendant's answer to the petition filed. Copies (13) to atty.

Sep 8 1972 Commissioner's standard pretrial order on liability filed. Copy to parties.

Dec 18 1972 Notice of reassignment of case to Commissioner filed. Copy to parties. vacated 5/2/75

Dec 29 1972 Plaintiff's motion for leave to file out of time filed (in this and related cases). Copies (2) to deft. ALLOWED JAN 10 1973.

Jan 10 1973 Plaintiffs' motion for extension of time (to March 8, 1973) to comply with pretrial order filed (in this and related cases). Copies (2) to deft. ALLOWED JAN 24 1973.

Mar 8 1973 Plaintiffs' motion for extension of time (90 days) to comply with pretrial order filed, (in this and related cases). Copies (2) to deft. ALLOWED MAR 20 1973.

Jun 1 1973 Plaintiffs' motion for extension of time (to September 4, 1973) to comply with pretrial order filed (in this and related cases). Copies (2) to deft. ALLOWED JUN 13 1973.

Aug 21 1973 Plaintiffs' motion for extension of time (to December 4, 1973) to comply with pretrial order filed (in this and related cases). Copies (2) to deft. ALLOWED SEP 4 1973.

DATE	PROCEEDINGS

Nov 16 1973 Defendant's motion for order directing plaintiffs to respond to attached written interrogatories filed, (in this and related cases). Copies (2) to atty. ALLOWED JAN 11 1974.

Dec 4 1973 Plaintiffs' motion for extension of time (to March 4, 1974) to comply with pretrial order filed. Copies (2) to deft. ALLOWED DEC 19 1973, see endorsement on motion.

Dec 17 1973 Plaintiffs' motion for extension of time (to December 24, 1973) to respond to motion re interrogatories filed. Copies (2) to deft. ALLOWED DEC 19 1973.

Dec 26 1973 Plaintiffs' motion for extension of time (to December 28, 1973) to respond to motion re interrogatories filed. Copies (2) to deft. ALLOWED DEC 28 1973.

Dec 28 1973 Plaintiffs' motion for protective order filed. Copies (2) to deft. DENIED JAN 11 1974 as premature.

Jan 15 1974 Plaintiff's motion for leave to take deposition upon oral examination filed. Copies (2) to deft. DENIED JAN 28 1974, without prejudice.

Mar 4 1974 Plaintiffs' motion for extension of time (to April 13, 1974) to comply with pretrial order filed. Copies (2) to deft. ALLOWED MAR 15 1974.

May 13 1974 Plaintiffs' motion to add additional plaintiffs filed. Copies (2) to deft. ALLOWED MAY 20 1974.

Jul 3 1974 Defendant's motion for leave to file out of time motion for extension of time to file pretrial submissions filed. Copies (2) to atty. (in this and 773-71, 774-71 and 775-71). ALLOWED JUL 8 1974.

Jul 8 1974 Defendant's motion for extension of time (to October 15, 1974) to comply with pretrial order filed (in this and 773-71, 774-71 and 775-71). Copies (2) to atty. ALLOWED JUL 9 1974.

Oct 23 1974 Defendant's motion for leave to file (for extension of time) out of time filed. Copies (2) to atty. (in this and related cases) ALLOWED OCT 30 1974.

DATE	PROCEEDINGS
Oct 30 1974	Defendant's motion for extension of time (to February 20, 1975) to comply with pretrial order filed (in this and related cases). Copies (2) to atty. ALLOWED OCT 30 1974.
Feb 28 1975	Defendant's motion for leave to file out of time (its motions for an extension of time) filed, (in this and related cases). Copies (2) to atty. ALLOWED MAR 11 1975.
Mar 11 1975	Defendant's motion for extension of time (to December 1, 1975) to file its pre-trial submissions filed (in this and related cases). Copies (2) to atty. ALLOWED MAR 11 1975, with no further extension to be granted except for extraordinary circumstances.
May 2 1975	Notice of reassignment of case to Trial Judge John P. Wiese filed. Copy to parties.
May 6 1975	Defendant's motion to define jurisdiction filed (in this and related cases). Copies (3) to atty. SEE WITHDRAWAL FILED MAY 21 1975.
May 14 1975	Plaintiffs' opposition to motion to motion to define jurisdiction filed. Copies (2) to deft. (in this and related cases).
May 14 1975	Plaintiffs' motion to add additional plaintiffs filed (in this and related cases). Copies (2) to deft. ALLOWED MAY 23 1975, see endorsement on motion.
May 21 1975	Defendant's response to motion to add additional plaintiffs filed (in this and related cases). Copies (2) to atty.
May 21 1975	Defendant's withdrawal of motion to define jurisdiction filed, (in this and related cases). Copies (2) to atty.
May 30 1975	Plaintiffs' reply to response to motion to add plaintiffs filed (BLOTJ), (in this and related cases). Copies (2) to deft.
Sep 10 1975	Plaintiffs' motion for leave to file depositions filed (in this and related cases). Copies (2) to deft. ALLOWED SEP 12 1975.

DATE	PROCEEDINGS
Sep 22 1975	Deposition upon oral examination of Lester C. McKeever together with exhibits A, B and C attached filed by defendant. Notice to parties. (in this and related cases).
Nov 10 1975	Depositions of Joseph M. Jackson (2 volumes), John B. Benedetto, Earl E. Allen, John W. Libby, Joseph E. Poitras, Perry Skarra (2 volumes) and Victor Meeker (2 volumes) filed by plaintiffs. Notice to parties.
Nov 25 1975	Joint motion for enlargements of time in which to file pretrial submissions (to January 15, 1976, etc.) filed by defendant, (in this and related cases). Copies (2) to atty. ALLOWED NOV 26 1975.
Jan 14 1976	Plaintiffs' motion for extension of time (to March 1, 1976) to comply with pretrial order filed (in this and related cases). Copies (2) to deft. ALLOWED JAN 16 1976.
Feb. 23 1976	Plaintiffs' motion to add additional plaintiffs filed (in this and related cases). Copies (2) to deft. ALLOWED MAR 2 1976.
Feb 26 1976	Defendant's response to motion to add additional plaintiffs filed. Copies (2) to atty.
Mar 1 1976	Plaintiffs' motion for extension of time (to March 22, 1976) to comply with pretrial order filed (in this and related cases). Copies (2) to deft. ALLOWED MAR 3 1976.
Apr 9 1976	Trial judge's memorandum of pretrial conference filed (in this and related cases). Copy to parties.
May 28 1976	Plaintiffs' motion to add additional plaintiffs filed (in this and related cases). Copies (2) to deft. ALLOWED JUN 8 1976.
Jun 1 1976	Plaintiffs' motion for extension of time (to June 8, 1976) to file their synopsis, etc. filed, (in this and related cases). Copies (2) to deft. ALLOWED JUN 2 1976.

DATE	PROCEEDINGS

Jul 13 1976 Defendant's motion for extension of time (of 120 days from July 20, 1976) to comply with pretrial order filed (in this and related cases). Copies (2) to atty. ALLOWED JUL 30, 1976, see endorsement on motion.

Jul 13 1976 Defendant's motion to require plaintiffs to submit reports and work sheets filed, (in this and related cases.) Copies (2) to atty. ALLOWED JUL 30 1976, see endorsement on motion.

Jul 16 1976 Plaintiffs' response to motions of July 13, 1976 filed (in this and related cases). Copies (2) to deft.

Sep 27 1976 Defendant's motion for leave to amend answer filed. Copies (2) to atty. ALLOWED OCT 13 1976.

Sep 28 1976 Plaintiffs' motion to add additional plaintiffs filed. Copies (2) to deft. (in this and related cases). ALLOWED OCT 14 1976.

Oct 6 1976 Plaintiffs' response to motion to amend answer filed (in this and related cases). Copies (2) to deft.

Oct 13 1976 Defendant's amended answer to first amended petition filed. Copies (5) to atty.

Oct 15 1976 Plaintiffs' motion for extension of time (to October 27, 1976) to file expert's report filed (in this and related cases). Copies (2) to deft. ALLOWED OCT 21 1976.

Nov 16 1976 Defendant's motion for extension of time (to March 17, 1977) to comply with pretrial order filed. (in this and related cases). Copies (2) to atty. ALLOWED NOV 24 1976.

Nov 29 1976 Plaintiffs' motion for authorization for service of subpoenas beyond 100 miles filed. Copies (2) to deft. (in this and related cases).

Dec 17 1976 Trial judge's order authorizing issuance of subpoenas beyond 100 miles filed. Copies to parties. (in this and related cases).

DATE	PROCEEDINGS

Jan 5 1977 Trial judge's order authorizing issuance of subpoena beyond 100 miles filed. Copy to parties. [in this and related cases]

Mar 9 1977 Defendant's motion for extension of time (to July 15, 1977) to comply with pretrial order filed (in this and related cases). Copies (2) to atty. MOOTED JUL 15 1977 by allowance of superceding motion of July 1, 1977.

Mar 8 1977 Transcript of testimony (14 volumes & a master index) taken at Seattle WA on various dates between January 20, 1977 and February 3, 1977 together with: Plaintiffs' exhibits BL-1 (9 volumes), BL-1A & B, BL-2 thru 9 (one Volume), BL-10 & 11, BL-13 thru 26, DT2.01 - 2.8-4.7 (one Volume), DT2.9-1 - 2.9-16 (one Volume), DT4.1-1 - 4.11-1.2 (one Volume), DT5.0-1 - 5.5-3 (one Volume), DT5.5-4 - 5.9-14 (one volume), DT6.2-31, DT 6.2.2-161, DT7.15.1-34.1, DT7.15.1-40.2, DT7.15.2-36.4, DT15.1-30.3, DT15.5-31, DT15.5-92.2, DT15.5-99.1, DT 15.5-113.1, DT15.25-4, DT16.5-23, DT19.9-27, JT-1, JT2 - 101 (one Volume), JT102 - 201 (one Volume), JT202 - 301 (one Volume), JT302 - 401 (one Volume), JT402 - 536 (one Volume), JT 537 - 686 (one Volume), JT687 - 841 (one Volume), JT842, JT843, JT844, JT845, VR-1, VR2A - VR57 (one Volume), VR58 - VR117 (one Volume), VR118A - VR121 (one Volume), W-1, W-1A, W-1B, defendant's exhibits A1 thru A131, filed. (in this and related cases). Notice to parties.

Mar 18 1977 Plaintiffs' reply to motion for time extension filed. Copies (2) to deft.

Apr 14 1977 Plaintiffs' motion for order directing defendant to respond to request for admissions filed (in this and related cases). Copies (2) to deft. MOOTED MAY 12 1977, see endorsement on motion.

May 10 1977 Defendant's objections to motion for order directing defendant to respond to request for admission filed. Copies (2) to atty. (in this and related cases).

DATE	PROCEEDINGS

May 20 1977 Trial judge's memorandum of pretrial conference filed (in this and related cases). Copy to parties.

May 20 1977 Plaintiffs' motion to add additional plaintiffs filed (in this and related cases). Copies (2) to deft. ALLOWED JUN 3, 1977.

Jun 7 1977 Trial judge's memorandum of pretrial conference filed. Copy to parties. [in this and related cases]

Jul 1 1977 Defendant's motion for extension of time (to December 17, 1977) to comply with pretrial order filed, (in this and related cases). Copies (2) to atty. ALLOWED JUL 13, 1977.

Sep 30 1977 Defendant's motion to dismiss for lack of jurisdiction and supporting memorandum filed. Copies (5) to atty.

Oct 31 1977 Plaintiffs' motion for extension of time (to December 30, 1977) to respond to motion to dismiss filed (in this and related cases). Copies (2) to deft. ALLOWED NOV 4 1977, with no further extension to be granted except for extraordinary circumstances.

Nov 30 1977 Plaintiffs' motion to add additional plaintiffs filed (in this and related cases). Copies (2) to deft. ALLOWED DEC 15 1977.

Dec 7 1977 Defendant's motion for extension of time to comply with pretrial order filed (in this and related cases). Copies (2) to atty. ALLOWED DEC 22 1977.

Dec. 30 1977 Plaintiffs' response to defendant's motion to dismiss filed. Copies (5) to deft. (in this and related cases).

Jan 11 1978 Defendant's motion for extension of time (to March 2, 1978) to file its reply to plaintiff's response to defendant's motion to dismiss filed. Copies (2) to atty. ALLOWED JAN 27 1978.

Mar 2 1978 Defendant's motion for extension of time (to March 22, 1978) and for leave to file brief with excess pages filed (in this and related cases). Copies (2) to atty. ALLOWED MAR 17 1978.

DATE	PROCEEDINGS

Mar 17 1978 Defendant's reply brief to plaintiffs' response to defendant's motion to dismiss filed. Copies (5) to atty.

Apr 6 1978 Submitted to the court on defendant's motion to dismiss petitions (in this and related cases). [JUN 13 1978: Returned for calendar]

Sep 21 1978 In this, and 775-71, court entered order that these cases will be heard by the court *en banc* on the October 1978, calendar. Copy to parties.

Oct 4 1978 This and 773-71 thru 775-71 argued and submitted on defendant's motion to dismiss petitions [Before Friedman, Davis, Nichols, Kunzig, Bennett, Smith En Banc].

Oct 18 1978 Plaintiffs' motion to add (8) additional plaintiffs filed. Copies (2) to deft. (in this, 773-71 thru 775-71. ALLOWED: NOV 2 1978.

Jan 24 1979 In this, 773-71, 774-71 and 775-71, defendant's motion to dismiss for lack of jurisdiction is denied, and the cases are returned to the Trial Division for further proceedings on the merits of the claims. Opinion by Judge Davis. Concurring opinion by Judge Nichols.

May 29 1979 In this, thru 775-71, notice of filing in the Supreme Court of the United States of a petition for writ of certiorari on May 23, 1979, No. 78-1756, October Term, 1978, filed.

RELEVANT DOCKET ENTRIES OF
COURT OF CLAIMS IN DOCKET
NO. 773-71

DATE	PROCEEDINGS
1971	
October 18	Petition filed.
1972	
June 22	Defendant's answer to the petition filed.
1976	
October 13	Defendant's amended answer to plaintiffs' first amended petition filed.
	SEE CASE NO. 772-71 FOR FURTHER PROCEEDINGS.

RELEVANT DOCKET ENTRIES OF
COURT OF CLAIMS IN DOCKET
NO. 774-71

DATE	PROCEEDINGS
1971	
October 18	Petition filed.
1972	
June 22	Defendant's answer to petition filed.
1976	
October 13	Defendant's amended answer to first amended petition filed.
	SEE CASE NO. 772-71 FOR FURTHER PROCEEDINGS.

RELEVANT DOCKET ENTRIES OF
COURT OF CLAIMS IN DOCKET
NO. 775-71

DATE	PROCEEDINGS
1971	
October 18	Petition filed.
1972	
June 14	Defendant's motion to dismiss filed. SEP. 29, 1972: referred to trial commissioner for appropriate action. ALSO SEE OCT. 2, 1972.
September 18	Plaintiffs' response to defendant's motion to dismiss filed.
September 18	Plaintiffs' motion for leave to file an amended petition filed. SEP. 29, 1972: motion referred to trial commissioner for appropriate action. OCT. 2, 1972: ALLOWED.
October 2	Re motion to dismiss filed June 14, 1972: motion moot in view of order this date on plaintiffs' motion to amend.
October 2	Plaintiff's first amended petition filed.
November 1	Defendant's motion to dismiss filed.
December 11	Plaintiffs' response to defendant's motion to dismiss filed.
December 27	Submitted to the court on defendant's motion to dismiss.
1973	
February 2	Court entered order granting defendant's motion to dismiss and dismissing the petition to the extent as set forth in the order. The defendant's motion to dismiss is otherwise denied.
March 30	Defendant's answer to plaintiffs' first amended petition filed.

DATE	PROCEEDINGS
1976	
October 13	Defendant's amended answer to first amended petition filed.
	SEE CASE NO. 772-71 FOR FURTHER PROCEEDINGS.

IN THE UNITED STATES COURT OF CLAIMS

No. 772-71

HELEN MITCHELL, an allottee of the Quinault Reservation, and 530 other allottees listed on Attachment A hereto; the QUINAULT ALLOTTEES ASSOCIATION; and the QUINAULT TRIBE; on their own behalves and on behalf of ALL ALLOTTEES of the Quinault Reservation or their successors, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

PETITION

[Filed Oct. 18, 1971]

(Logging Contracts Claim)

This is an action to recover money damages from the defendant, arising from its management and disposition of the property of the plaintiffs. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1505.

1. Plaintiff Helen Mitchell and the 530 other plaintiffs named in Attachment A hereto are Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are the successors of such Indians. Plaintiffs are predominantly Quinault Indians, but also include Queets, Quileute, Hoh, Chehalis, Cowlitz, Chinook and other Indians.

2. The Quinault Allottees Association is an unincorporated association consisting of the allottees described in the preceding paragraph. The Association was formed in 1968 for the purpose of representing the interests of all of the allottees of the Quinault Reservation, or their successors. Plaintiffs know the names of some 1,450 of the original allottees or their successors, but there are many more names which plaintiffs do not know. The Association's governing body is the Quinault Allottees Committee, and Chairman of the Committee is plaintiff Helen Mitchell. The Secretary of the Interior has from

time to time recognized the Committee as representing all of the allottees of the Quinault Reservation.

3. The Quinault Tribe is an Indian Tribe, which has been in existence since time immemorial, and which has sovereignty over the Quinault Reservation. Its basic relationship with the defendant is established by the Treaty of Olympia, paragraph 5 below.

4. The class on whose behalf the plaintiffs sue consists of all allottees of the Quinault Reservation, or their successors, plus the Quinault Tribe in its capacity of owner of land and timber damaged by defendant's conduct as alleged herein. The class is so numerous that joinder of all members is impractical; the questions of law as to liability are common to the entire class; the claims and defenses of the plaintiffs are typical of the claims and defenses of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions by individual members of the class would create a risk both of inconsistent and varying adjudications with respect to individual members of the class establishing incompatible judicial standards, and of prejudicing individual members of the class whose interests would be substantially impaired by the result in this suit. Further, the interests of those members of the class who are not named plaintiffs cannot as a practical matter be adjudicated with finality except through a class action. Further, the claims presented herein arise out of the management of the Quinault Forest, which the defendant managed in many respects as a single entity.

5. Under the Treaty of Olympia, 12 Stat. 971 (1859), the Quinault and Quileute Tribes ceded all their land in the country theretofore occupied by them on the Pacific coast of Washington. The Treaty provided that:

> "Article II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of lands sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their

exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs or Indian agent. . . .

"* * *

"ARTICLE VI. The President . . . may consolidate them with other friendly tribes or bands . . . and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable."

6. The sixth article of the Treaty with the Omahas, 10 Stat. 1043, 1044-5 (1854), referred to in the Quinault Treaty, provides as follows:

"ARTICLE 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And

the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land. . . . No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

The State of Washington was admitted into the Union in 1889, 25 Stat. 675. The state legislature has not removed the restrictions provided for in the above-quoted Article 6, nor has Congress consented to the removal of the restrictions.

7. On November 4, 1873, 1 Kapp. 923, President U.S. Grant by Executive Order established the Quinault Reservation with its present boundaries "for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast. . . ." Since 1874 the Quinault Indian Reservation has retained its outer boundaries without change. It comprises some 200,000 acres, including all of Lake Quinault and 20

miles of tidelands along the ocean, and was originally heavily forested throughout.

8. The Tribe remained the sole owner of the Reservation until about 1905. Then, pursuant to the above-quoted Treaty and Executive Order, the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. § 331, and the Act of March 4, 1911, 36 Stat. 1345, defendant began to allot the Reservation to the members of the Tribe and other Indians. By 1933, the Reservation was completely allotted. There were over 2,300 allotments, typically 80 acres in size, and covered with valuable timber.

9. Each allottee received a deed, signed in the name of the President of the United States, containing language pursuant to Sec. 5 of the General Allotment Act, as amended, 25 U.S.C. § 348, that the United States will hold the allotment for the period of 25 years,

> ". . . in trust for the sole use and benefit of the Indian . . . or in case of his decease, of his heirs . . . and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever . . . ."

The trust period of 25 years was extended from time to time, see 25 U.S.C. § 391, and then extended indefinitely by Sec. 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 462.

10. Pursuant to the Quinault Treaty, the Executive Order of 1873, the General Allotment Act of 1887, and the Act of March 4, 1911, the defendant has a fiduciary duty to the allottees to manage their lands and timber prudently, until the trust period ends. See also the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 ff., especially § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 41 Stat. 415 (1920), 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and

embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

11. The Tribe owns a few small parcels of land, totalling about 4,000 acres, some as a result of restorations by Congress, see, *e.g.*, 73 Stat. 427 and 76 Stat. 913. All of the land and timber owned by the Tribe is held in trust by the defendant for the Tribe, and so long as the trust continues, the defendant has a fiduciary duty to manage such lands and timber prudently. This duty is recognized in 60 Stat. at 1055-6 (1946), Sec. 24; and see 25 U.S.C. § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

12. The Indian sovereignty over the Reservation lies in the Quinault Tribe. The membership of the Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of at least one-quarter Quileute, Hoh, Chehalis, Chinook or Cowlitz blood who own a trust interest in an allotment on the Reservation, and who reside on or near the Reservation). Many allottees are blood or affiliated members of the Tribe. However, many other allotteees do not live on or within the required distance of the Reservation and so are ineligible to be members.

13. The allottees as such were totally unorganized until 1968. The Tribe has always been organized, but it could not, and did not, represent the allottees.

14. The typical allottee, for lack of education, experience and capacity to understand, relies completely on the defendant to manage his land and timber prudently, and to obtain the fair market price therefor when sold. The defendant is well aware of this reliance.

15. In 1916, after the Reservation was partially allotted, the defendant caused the timber on the Reservation to be inventoried, and logging began shortly after. The first long-term logging contract was let in 1920. By 1950, the southern half of the Reservation had been

logged or was in the process of being logged under long-term contracts. Still unlogged were the Queets, Taholah and Crane Creek Units, comprising about 45,000, 30,000 and 35,000 acres respectively, in the northern half of the Reservation.

16. Beginning around 1946, in order to arrange for the logging of these three remaining units, the defendant set about gathering powers of attorneys from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long-term logging contracts. Many allottees were told or encouraged to believe that unless they signed the powers, their timber would be left out of the logging contracts, and the Secretary might not permit it to be logged in their lifetimes. The defendant's employees obtained signatures without adequate or accurate explanation of the facts and the alternatives available, and with misrepresentation, and with undue influence, Plaintiffs were incapable of making an intelligent decision whether to sign the powers, and signed only in reliance on defendant's representation that it would be in their best interests to do so.

17. Pursuant to the aforesaid powers of attorneys and to its powers as trustee of the plaintiffs' land, the defendant, acting through the Superintendent of the Taholah Indian Agency, entered into a contract with the Aloha Lumber Company on April 26, 1950, covering the Taholah Unit. Under this contract, Aloha purchased the timber on all allotments within the boundaries of the Taholah Unit and for which the Secretary had a power of attorney, and agreed to log it over the next 29 years. This contract will terminate in 1979.

18. The Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952. It was in essential respects similar to the Taholah Unit contract, except that the term was 34 years, so that it will terminate in 1986.

19. The Queets Unit, comprising about 45,000 acres, was put up for bids, but no bids were received. Consequently, no long-term logging contract was let covering that unit, and logging since 1950 has been on an allotment-by-allotment basis. The defendant encouraged individual allottees in that unit to sell their land in fee,

and discouraged or prohibited sales of timber only, and as a consequence, only about 5,700 acres of trust allotments with merchantable timber still remain in the Queets Unit, the rest having been sold to non-Indians.

20. The various contracts which defendant arranged for the logging of the Quinault Forest failed adequately to protect the interests of the allottees and the Tribe. Furthermore, the contracts were administered by defendant in such a way as to fail adequately to protect the interests of the allottees and the Tribe. The arranging of the contracts and their administration were in breach of defendant's fiduciary duty to the allottees and the Tribe. As a result, the allottees and the Tribe failed to receive fair market value for their timber, were unnecessarily delayed and restricted in realizing proceeds from their timber, suffered loss of property without just compensation, and suffered other damages in connection with the contracts.

WHEREFORE, the plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest as such or as part of just compensation, and such other relief as this Court may deem proper.

Respectfully submitted,

CHARLES A. HOBBS
Attorney for Plaintiffs
1616 H Street, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER
Jerry C. Straus
Charles H. Gibbs, Jr.
Of Counsel

(Note: Pursuant to an agreement between counsel, Attachment A to this Petition, listing the names of individual plaintiffs, has not been reproduced in this Appendix.)

IN THE UNITED STATES COURT OF CLAIMS

No. 772-71

HELEN MITCHELL, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

ANSWER

[Filed June 22, 1972]

First Defense

Petitioners fail to state a claim upon which relief can be granted.

Second Defense

Petitioners allegations are so vague and general that the petition fails to meet the requirements set out in Rule 35, and therefore, the petition fails to state a claim upon which relief can be granted.

Third Defense

The petition fails to state a claim within the jurisdiction of this Court as to those claims alleged to have accrued prior to October 18, 1965, as such claims are barred by limitations. 28 U.S.C. 2501.

Fourth Defense

The petition fails to state a claim within the jurisdiction of this Court as to those claims that accrued prior to August 13, 1946. 28 U.S.C. 1505.

Fifth Defense

The petition is defective for misjoinder of issues as the issues presented are not common to all the plaintiffs.

Sixth Defense

The petition is defective for misjoinder of parties.

Seventh Defense

For answer to the numbered paragraphs of the petition, defendant asserts that:

1. The allegations in the introductory paragraph are conclusions of law requiring no answer.
2. Defendant admits the allegations in paragraph 1.
3. Defendant admits the allegations in paragraph 2, except defendant admits in the last sentence of paragraph 2 that the committee has only been recognized as spokesman for the allottees and has not been recognized as the representative of the allottees.
4. The allegations in paragraph 3 are conclusions of law requiring no answer.
5. Defendant denies the allegations in paragraph 4. For further answer to paragraph 4, the defendant alleges that the only parties plaintiff are those named at the date of filing the petition or those individuals who subsequently enter pursuant to the Court's order providing for giving of notice of class action.
6. Defendant admits the allegations in paragraphs 5 and 6.
7. Defendant admits the allegations in paragraph 7.
8. Defendants admits the allegations in paragraph 8.
9. Defendant admits the allegations in paragraph 9.
10. The allegations in paragraph 10 as to the existence of a fiduciary duty and the alleged basis for such a duty are conclusions of law requiring no answer. Defendant does admit the existence of the various statutes and regulations cited.
11. Defendant admits the allegations in paragraph 11 that the Tribe owns a few parcels of land totalling about 4,000 acres, but the remainder of the allegations in paragraph 11 are conclusions of law requiring no answer.
12. Defendant admits the allegations in paragraph 12, except the first and last sentences are conclusions of law requiring no answer. Further, defendant is without knowledge or information sufficient to form a belief as to whether some of the "allottees do not live on or within

the required distance of the Reservation and so are ineligible to be members."

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Defendant denies the allegations in paragraph 14.

15. Defendant admits the allegations in paragraph 15.

16. Defendant admits the allegation in paragraph 16 that the defendant obtained powers of attorney from the owners of allotments in the Queets, Taholah, and Crane Creek Units authorizing the defendant to enter into long term logging contracts, but defendant denies the remainder of the allegations in paragraph 16.

17. Defendant admits the allegations in paragraph 17.

18. Defendant admits the allegations in paragraph 18, except defendant denies that the contract was in "essential respects similar to the Taholah Unit Contract."

19. Defendant denies the allegations in paragraph 19, except defendant admits the allegations in the second sentence of paragraph 19.

20. Defendant denies the allegations in paragraph 20.

Respectfully submitted,

KENT FRIZZELL
Assistant Attorney General

HERMAN L. FUSSELL
Attorney, Department of Justice
Room 2138, Telephone 739-2741
Washington, D.C. 20530

Attorneys for Defendant

IN THE UNITED STATES COURT OF CLAIMS

No. 772-71

HELEN MITCHELL, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

AMENDED ANSWER TO PLAINTIFFS' FIRST AMENDED PETITION

[Filed Oct. 13, 1976]

The defendant, as an amendment to its Answer to Plaintiffs' Petition, and without waiving the defendant's contention that the plaintiffs have no right to a general accounting in Docket No. 775-71, alleges:

1. The defendant has, from time to time, expended various sums of money out of many appropriations on behalf of the plaintiff Indian tribe and on behalf of allottee plaintiffs and for the benefit of the plaintiff tribe and the allottee plaintiffs, to provide items and services and for varied purposes, the amount of which is unknown to the defendant at this time.

2. The answer will be further amended if it should be determined that the plaintiff tribe and the allottee plaintiffs are entitled to maintain this suit and that the defendant is liable to the plaintiff tribe and any of the allottee plaintiffs in any amount.

3. The answer will also be further amended when the amount of the above-referred to disbursements becomes known so that such amount may be set-off as gratuitous expenditures, as reimbursable expenditures incurred in the care of the forests on the Quinault Reservation, and as disbursements for the welfare of the plaintiff tribe and of the allottee plaintiffs, and in mitigation of damages, should any damages be awarded the plaintiffs herein.

4. Should the Court find any sum due in favor of the plaintiff tribe or the plaintiff allottees, said plaintiffs are not entitled to any interest thereon.

Respectfully submitted,

PETER R. TAFT
Assistant Attorney General

DAVID M. MARSHALL
Attorney
Attorneys for Defendant

By: _____
Attorney

IN THE UNITED STATES COURT OF CLAIMS

No. 773-71

HELEN MITCHELL, an allottee of the Quinault Reservation, and 530 other allottees listed on Attachment A hereto; the QUINAULT ALLOTTEES ASSOCIATION; and the QUINAULT TRIBE; on their own behalves and on behalf of ALL ALLOTTEES of the Quinault Reservation or their successors, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

PETITION

[Filed Oct. 18, 1971]

(Queets Unit Claim)

This is an action to recover money damages from the defendant, arising from its management and disposition of the property of the plaintiffs. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1505.

1. Plaintiff Helen Mitchell and the 530 other plaintiffs named in Attachment A hereto are Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are the successors of such Indians. Plaintiffs are predominantly Quinault Indians, but also include Queets, Quileute, Hoh, Chehalis, Cowlitz, Chinook and other Indians.

2. The Quinault Allottees Association is an unincorporated association consisting of the allottees described in the preceding paragraph. The Association was formed in 1968 for the purpose of representing the interests of all of the allottees of the Quinault Reservation, or their successors. Plaintiffs know the names of some 1,450 of the original allottees or their successors, but there are many more names which plaintiffs do not know. The Association's governing body is the Quinault Allottees Committee, and Chairman of the Committee is plaintiff

Helen Mitchell. The Secretary of the Interior has from time to time recognized the Committee as representing all of the allottees of the Quinault Reservation.

3. The Quinault Tribe is an Indian Tribe, which has been in existence since time immemorial, and which has sovereignty over the Quinault Reservation. Its basic relationship with the defendant is established by the Treaty of Olympia, paragraph 5 below.

4. The class on whose behalf the plaintiffs sue consists of all allottees of the Quinault Reservation, or their successors, plus the Quinault Tribe in its capacity of owner of land and timber damaged by defendant's conduct as alleged herein. The class is so numerous that joinder of all members is impractical; the questions of law as to liability are common to the entire class; the claims and defenses of the plaintiffs are typical of the claims and defenses of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions by individual members of the class would create a risk both of inconsistent and varying adjudications with respect to individual members of the class establishing incompatible judicial standards, and of prejudicing individual members of the class whose interests would be substantially impaired by the result in this suit. Further, the interests of those members of the class who are not named plaintiffs cannot as a practical matter be adjudicated with finality except through a class action. Further, the claims presented herein arise out of the management of the Quinault Forest, which the defendant managed in many respects as a single entity.

5. Under the Treaty of Olympia, 12 Stat. 971 (1859), the Quinault and Quileute Tribes ceded all their land in the country theretofore occupied by them on the Pacific coast of Washington. The Treaty provided that:

> "Article II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of lands sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their

> exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs or Indian agent. . . .
>
> "* * *
>
> "ARTICLE VI. The President . . . may consolidate them with other friendly tribes or bands . . . and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable."

6. The sixth article of the Treaty with the Omahas, 10 Stat. 1043, 1044-5 (1854), referred to in the Quinault Treaty, provides as follows:

> "ARTICLE 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a Section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such

person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disclosed of as is provided for the disposition of the excess of said land. . . . No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

The State of Washington was admitted into the Union in 1889, 25 Stat. 676. The state legislature has not removed the restrictions provided for in the above-quoted Article 6, nor has Congress consented to the removal of the restrictions.

7. On November 4, 1873, 1 Kapp. 923, President U. S. Grant by Executive Order established the Quinault Reservation with its present boundaries "for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast. . . ." Since 1874 the Quinault Indian Reservation has retained its outer boundaries without change. It comprises some 200,000 acres, including all of Lake Quinault and 20 miles of tidelands along the ocean, and was originally heavily forested throughout.

8. The Tribe remained the sole owner of the Reservation until about 1905. Then, pursuant to the above-quoted Treaty and Executive Order, the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. § 331, and the Act of March 4, 1911, 36 Stat. 1345, defendant began to allot the Reservation to the members of the Tribe and other Indians. By 1933, the Reservation was completely allotted. There were over 2,300 allotments, typically 80 acres in size, and covered with valuable timber.

9. Each allottee received a deed, signed in the name of the President of the United States, containing language pursuant to Sec. 5 of the General Allotment Act, as amended, 25 U.S.C. § 348, that the United States will hold the allotment for the period of 25 years,

> ". . . in trust for the sole use and benefit of the Indian . . . or in case of his decease, of his heirs . . . and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever . . . ."

The trust period of 25 years was extended from time to time, see 25 U.S.C. § 391, and then extended indefinitely by Sec. 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 462.

10. Pursuant to the Quinault Treaty, the Executive Order of 1873, the General Allotment Act of 1877, and the Act of March 4, 1911, the defendant has a fiduciary duty to the allottees to manage their lands and timber prudently, until the trust period ends. See also the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 ff., especially § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 41 Stat. 415 (1920), 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

11. The Tribe owns a few small parcels of land, totalling about 4,000 acres, some as a result of restorations by Congress, see, *e.g.*, 73 Stat. 427 and 76 Stat. 913. All of the land and timber owned by the Tribe is held in trust by the defendant for the Tribe, and so long as the trust continues, the defendant has a fiduciary duty to manage such lands and timber prudently. This duty is recognized in 60 Stat. at 1055-6 (1946), Sec. 24; and see 25 U.S.C. § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

12. The Indian sovereignty over the Reservation lies in the Quinault Tribe. The membership of the Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of at least one-quarter Quileute, Hoh, Chehalis, Chinook or Cowlitz blood who own a trust interest in an allotment on the Reservation, and who reside on or near the Reservation). Many allottees are blood or affiliated members of the Tribe. However, many other allottees do not live on or within the required distance of the Reservation and so are ineligible to be members.

13. The allottees as such were totally unorganized until 1968. The Tribe has always been organized, but it could not, and did not, represent the allottees.

14. The typical allottee, for lack of education, experience and capacity to understand, relies completely on the defendant to manage his land and timber prudently, and to obtain the fair market price therefor when sold. The defendant is well aware of this reliance.

15. In 1916, after the Reservation was partially allotted, the defendant caused the timber on the Reservation to be inventoried, and logging began shortly after. The first long-term logging contract was let in 1920. By 1950, the southern half of the Reservation had been logged or was in the process of being logged under long-

term contracts. Still unlogged were the Queets, Taholah and Crane Creek Units, comprising about 45,000, 30,000 and 35,000 acres respectively, in the northern half of the Reservation.

16. Beginning around 1946, in order to arrange for the logging of these three remaining units, the defendant set about gathering powers of attorneys from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long-term logging contracts. Many allottees were told or encouraged to believe that unless they signed the powers, their timber would be left out of the logging contracts, and the Secretary might not permit it to be logged in their lifetimes. The defendant's employees obtained signatures without adequate or accurate explanation of the facts and the alternatives available, and with misrepresentation, and with undue influence. Plaintiffs were incapable of making an intelligent decision whether to sign the powers, and signed only in reliance on defendant's representation that it would be in their best interests to do so.

17. Pursuant to the aforesaid powers of attorneys and to its powers as trustee of the plaintiffs' land, the defendant, acting through the Superintendent of the Taholah Indian Agency, entered into a contract with the Aloha Lumber Company on April 26, 1950, covering the Taholah Unit. Under this contract, Aloha purchased the timber on all allotments within the boundaries of the Taholah Unit and for which the Secretary had a power of attorney, and agreed to log it over the next 29 years. This contract will terminate in 1979.

18. The Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952. It was in essential respects similar to the Taholah Unit contract, except that the term was 34 years, so that it will terminate in 1986.

19. The Queets Unit, comprising about 45,000 acres, was put up for bids, but no bids were received. Consequently, no long-term logging contract was let covering that unit, and logging since 1950 has been on an allotment-by-allotment basis. The defendant encouraged individual allottees in that unit to sell their land in fee,

and discouraged or prohibited sales of timber only, and as a consequence, only about 5,700 acres of trust allotments with merchantable timber still remain in the Queets Unit, the rest having been sold to non-Indians.

20. The defendant's management of the Queets Unit, for example its failure to arrange for proper logging of the unit, its failure to insure a sound road system prior to allowing most of the land to go out of Indian ownership, its encouragement of land sales by Indians, its policies toward Indians who wanted to log their own allotments, were in breach of defendant's fiduciary duty to the allottees and the Tribe. The same allegations also apply to individual allotments located within areas under logging contracts but not subject to such contracts, and to other allotments. As a result, the allottees and the Tribe failed to receive fair market value for their land and timber, were unnecessarily delayed and restricted in realizing proceeds from their timber, suffered loss of property without just compensation, and were otherwise damaged. The Tribe was specially damaged in having a substantial part of its jurisdiction pass into non-Indian ownership.

WHEREFORE, the plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest as such or as part of just compensation, and such other relief as this Court may deem proper.

Respectfully submitted,

CHARLES A. HOBBS
Attorney for Plaintiffs
1616 H Street, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER
Jerry C. Straus
Charles H. Gibbs, Jr.
Of Counsel

(Note: Pursuant to an agreement between counsel, Attachment A to this Petition, listing the names of individual plaintiffs, has not been reproduced in this Appendix.)

IN THE UNITED STATES COURT OF CLAIMS

No. 773-71

HELEN MITCHELL, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

ANSWER
[Filed June 22, 1972]

First Defense

Petitioners fail to state a claim upon which relief can be granted.

Second Defense

Petitioners allegations are so vague and general that the petition fails to meet the requirements set out in Rule 35, and therefore, the petition fails to state a claim upon which relief can be granted.

Third Defense

The petition fails to state a claim within the jurisdiction of this Court as to those claims alleged to have accrued prior to October 18, 1965, as such claims are barred by limitations. 28 U.S.C. 2501.

Fourth Defense

The petition fails to state a claim within the jurisdiction of this Court as to those claims that accrued prior to August 13, 1946. 28 U.S.C. 1505.

Fifth Defense

The petition is defective for misjoinder of issues as the issues presented are not common to all the plaintiffs.

Sixth Defense

The petition is defective for misjoinder of parties.

Seventh Defense

For answer to the numbered paragraphs of the petition, defendant asserts that:

1. The allegations in the introductory paragraph are conclusions of law requiring no answer.
2. Defendant admits the allegations in paragraph 1.
3. Defendant admits the allegations in paragraph 2, except defendant admits in the last sentence of paragraph 2 that the committee has only been recognized as spokesman for the allottees and has not been recognized as the representative of the allottees.
4. The allegations in paragraph 3 are conclusions of law requiring no answer.
5. Defendant denies the allegations in paragraph 4. For further answer to paragraph 4, the defendant alleges that the only parties plaintiff are those named at the date of filing the petition or those individuals who subsequently enter pursuant to the Court's order providing for giving of notice of class action.
6. Defendant admits the allegations in paragraph 5 and 6.
7. Defendant admits the allegations in paragraph 7.
8. Defendant admits the allegations in paragraph 8.
9. Defendant admits the allegations in paragraph 9.
10. The allegations in paragraph 10 as to the existence of a fiduciary duty and the alleged basis for such a duty are conclusions of law requiring no answer. Defendant does admit the existence of the various statutes and regulations cited.
11. Defendant admits the allegations in paragraph 11, that the Tribe owns a few parcels of land, totalling about 4,000 acres, but the remainder of the

allegations in paragraph 11 are conclusions of law requiring no answer.

12. Defendant admits the allegations in paragraph 12, except the first and last sentences are conclusions of law requiring no answer. Further, defendant is without knowledge or information sufficient to form a belief as to whether some of the "allottees do not live on or within the required distance of the Reservation and so are ineligible to be members."

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Defendant denies the allegations in paragraph 14.

15. Defendant admits the allegations in paragraph 15.

16. Defendant admits the allegations in paragraph 16 that the defendant obtained powers of attorney from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long term logging contracts, but defendant denies the remainder of the allegations in paragraph 16.

17. Defendant admits the allegations in paragraph 17.

18. Defendant admits the allegations in paragraph 18, except defendant denies that the contract was in "essential respects similar to the Taholah Unit Contract."

19. Defendant denies the allegations in paragraph 19, except defendant admits the allegations in the second sentence of paragraph 19.

20. Defendant denies the allegations in paragraph 20.

Respectfully submitted,

KENT FRIZZELL
Assistant Attorney General

HERMAN L. FUSSELL
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Room 2138, Telephone 739-2741
Washington, D.C. 20530

Attorneys for Defendant

IN THE UNITED STATES COURT OF CLAIMS

No. 773-71

HELEN MITCHELL, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

AMENDED ANSWER TO PLAINTIFFS' FIRST AMENDED PETITION

[Filed Oct. 13, 1976]

The defendant, as an amendment to its Answer to Plaintiffs' Petition, and without waiving the defendant's contention that the plaintiffs have no right to a general accounting in Docket No. 775-71, alleges:

1. The defendant has, from time to time, expended various sums of money out of many appropriations on behalf of the plaintiff Indian tribe and on behalf of allottee plaintiffs and for the benefit of the plaintiff tribe and the allottee plaintiffs, to provide items and services and for various purposes, the amount of which is unknown to the defendant at this time.

2. The answer will be further amended if it should be determined that the plaintiff tribe and the allottee plaintiffs are entitled to maintain this suit and that the defendant is liable to the plaintiff tribe and any of the allottee plaintiffs in any amount.

3. The answer will also be further amended when the amount of the above-referred to disbursements becomes known so that such amount may be set-off as gratuitous expenditures, as reimbursable expenditures incurred in the care of the forests on the Quinault Reservation, and as disbursements for the welfare of the plaintiff tribe and of the allottee plaintiffs, and in mitigation of damages, should any damages be awarded the plaintiffs herein.

4. Should the Court find any sum due in favor of the plaintiff tribe or the plaintiff allottees, said plaintiffs are not entitled to any interest thereon.

Respectfully submitted,

PETER R. TAFT
Assistant Attorney General

DAVID M. MARSHALL
Attorney
Attorneys for Defendant

By: _____
Attorney

IN THE UNITED STATES COURT OF CLAIMS

No. 774-71

HELEN MITCHELL, an allottee of the Quinault Reservation, and 530 other allottees listed on Attachment A hereto; the QUINAULT ALLOTTEES ASSOCIATION; and the QUINAULT TRIBE; on their own behalves and on behalf of ALL ALLOTTEES of the Quinault Reservation or their successors, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

PETITION

[Filed Oct. 18, 1971]

(Reforestation Claim)

This is an action to recover money damages from the defendant, arising from its management and disposition of the property of the plaintiffs. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1505.

1. Plaintiff Helen Mitchell and the 530 other plaintiffs named in Attachment A hereto are Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are the successors of such Indians. Plaintiffs are predominantly Quinault Indians, but also include Queets, Quileute, Hoh, Chehalis, Cowlitz, Chinook and other Indians.

2. The Quinault Allottees Association is an unincorporated association consisting of the allottees described in the preceding paragraph. The Association was formed in 1968 for the purpose of representing the interests of all of the allottees of the Quinault Reservation, of their successors. Plaintiffs know the names of some 1,450 of the original allottees or their successors, but there are many more names which plaintiffs do not know. The Association's governing body is the Quinault Allottees

Committee, and Chairman of the Committee is plaintiff Helen Mitchell. The Secretary of the Interior has from time to time recognized the Committee as representing all of the allottees of the Quinault Reservation.

3. The Quinault Tribe is an Indian Tribe, which has been in existence since time immemorial, and which has sovereignty over the Quinault Reservation. Its basic relationship with the defendant is established by the Treaty of Olympia, paragraph 5 below.

4. The class on whose behalf the plaintiffs sue consists of all allottees of the Quinault Reservation, or their successors, plus the Quinault Tribe in its capacity of owner of land and timber damaged by defendant's conduct as alleged herein. The class is numerous that joinder of all members is impractical; the questions of law as to liability are common to the entire class; the claims and defenses of the plaintiffs are typical of the claims and defenses of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions by individual members of the class would create a risk both of inconsistent and varying adjudications with respect to individual members of the class establishing incompatible judicial standards, and of prejudicing individual members of the class whose interests would be substantially impaired by the result in this suit. Further, the interests of those members of the class who are not named plaintiffs cannot as a practical matter be adjudicated with finality except through a class action. Further, the claims presented herein arise out of the management of the Quinault Forest, which the defendant managed in many respects as a single entity.

5. Under the Treaty of Olympia, 12 Stat. 971 (1859), the Quinault and Quileute Tribes ceded all their land in the country theretofore occupied by them on the Pacific coast of Washington. The Treaty provided that:

> "Article II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of lands sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and

hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs or Indian agent. . . .

"* * *

"ARTICLE VI. The President . . . may consolidate them with other friendly tribes or bands . . . and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable."

6. The sixth article of the Treaty with the Omahas, 10 Stat. 1043, 1044-5 (1854), referred to in the Quinault Treaty, provides as follows:

"ARTICLE 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land. . . . No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

The State of Washington was admitted into the Union in 1889, 25 Stat. 676. The state legislature has not removed the restrictions provided for in the above-quoted Article 6, nor has Congress consented to the removal of the restrictions.

7. On November 4, 1873, 1 Kapp. 923, President U. S. Grant by Executive Order established the Quinault Reservation with its present boundaries "for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast. . . ." Since 1874 the Quinault Indian Reservation has retained its outer boundaries without charge. It comprises some 200,000 acres, including all of Lake Quinault and 20 miles of

tidelands along the ocean, and was originally heavily forested throughout.

8. The Tribe remained the sole owner of the Reservation until about 1905. Then, pursuant to the above-quoted Treaty and Executive Order, the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. § 331, and the Act of March 4, 1911, 36 Stat. 1345, defendant began to allot the Reservation to the members of the Tribe and other Indians. By 1933, the Reservation was completely allotted. There were over 2,300 allotments, typically 80 acres in size, and covered with valuable timber.

9. Each allottee received a deed, signed in the name of the President of the United States, containing language pursuant to Sec. 5 of the General Allotment Act, as amended, 25 U.S.C. § 348, that the United States will hold the allotment for the period of 25 years,

> ". . . in trust for the sole use and benefit of the Indian . . . or in case of his decease, of his heirs . . . and that the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever . . . ."

The trust period of 25 years was extended from time to time, see 25 U.S.C. § 391, and then extended indefinitely by Sec. 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 462.

10. Pursuant to the Quinault Treaty, the Executive Order of 1873, the General Allotment Act of 1887, and the Act of March 4, 1911, the defendant has a fiduciary duty to the allottees to manage their lands and timber prudently, until the trust period ends. See also the Indian Reorganization Act of 1934, 48 Stat. 25 U.S.C. §§ 461 ff., especially § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 41 Stat. 415 (1920), 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in

the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

11. The Tribe owns a few small parcels of land, totalling about 4,000 acres, some as a result of restorations by Congress, see, *e.g.*, 73 Stat. 427 and 76 Stat. 913. All of the land and timber owned by the Tribe is held in trust by the defendant for the Tribe, and so long as the trust continues, the defendant has a fiduciary duty to manage such lands and timber prudently. This duty is recognized in 60 Stat. at 1055-6 (1946), Sec. 24; and see 25 U.S.C. § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

12. The Indian sovereignty over the Reservation lies in the Quinault Tribe. The membership of the Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of a least one-quarter Quileute, Hoh, Chehalis, Chinook or Cowlitz blood who own a trust interest in an allotment on the Reservation, and who reside on or near the Reservation). Many allottees are blood or affiliated members of the Tribe. However, many other allottees do not live on or within the required distance of the Reservation and so are ineligible to be members.

13. The allottees as such were totally unorganized until 1968. The Tribe has always been organized, but it could not, and did not, represent the allottees.

14. The typical allottee, for lack of education, experience and capacity to understand, relies completely on the defendant to manage his land and timber prudently, and to obtain the fair market price therefor when sold. The defendant is well aware of this reliance.

15. In 1916, after the Reservation was partially allotted, the defendant caused the timber on the Reservation to be inventoried, and logging began shortly after. The first long-term logging contract was let in 1920. By 1950, the southern half of the Reservation had been

logged or was in the process of being logged under long-term contracts. Still unlogged were the Queets, Taholah and Crane Creek Units, comprising about 45,000, 30,000 and 35,000 acres respectively, in the northern half of the Reservation.

16. Beginning around 1946, in order to arrange for the logging of these three remaining units, the defendant set about gathering powers of attorneys from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long-term logging contracts. Many allottees were told or encouraged to believe that unless they signed the powers, their timber would be left out of the logging contracts, and the Secretary might not permit it to be logged in their lifetimes. The defendant's employees obtained signatures without adequate or accurate explanation of the facts and the alternatives available, and with misrepresentation, and with undue influence. Plaintiffs were incapable of making an intelligent decision whether to sign the powers, and signed only in reliance on defendant's representation that it would be in their best interests to do so.

17. Pursuant to the aforesaid powers of attorneys and to its powers as trustee of the plaintiffs' land, the defendant, acting through the Superintendent of the Taholah Indian Agency, entered into a contract with the Aloha Lumber Company on April 26, 1950, covering the Taholah Unit. Under this contract, Aloha purchased the timber on all allotments within the boundaries of the Taholah Unit and for which the Secretary had a power of attorney, and agreed to log it over the next 29 years. This contract will terminate in 1979.

18. The Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952. It was in essential respects similar to the Taholah Unit contract, except that the term was 34 years, so that it will terminate in 1986.

19. The Queets Unit, comprising about 45,000 acres, was put up for bids, but no bids were received. Consequently, no long-term logging contract was let covering that unit, and logging since 1950 has been on an

allotment-by-allotment basis. The defendant encouraged individual allottees in that unit to sell their land in fee, and discouraged or prohibited sales of timber only, and as a consequence, only about 5,700 acres of trust allotments with merchantable timber still remain in the Queets Unit, the rest having been sold to non-Indians.

20. The defendant's management of the plaintiff's land, to the extent it failed to arrange for proper rehabilitation and reforestation of cutover land, and for proper care of growing timber, was in breach of its fiduciary duty to the allottees and the Tribe. As a result, the volume of timber owned by the allottees and the Tribe failed to increased from year to year at the rate it should; they suffered loss of property without just compensation, and were otherwise damaged.

WHEREFORE, the plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest as such or as part of just compensation, and such other relief as this Court may deem proper.

Respectfully submitted,

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WILKINSON, CRAGUN & BARKER
Jerry C. Straus
Charles H. Gibbs, Jr.
Of Counsel

(Note: Pursuant to an agreement between counsel, Attachment A to this Petition, listing the names of individual plaintiffs, has not been reproduced in this Appendix.)

IN THE UNITED STATES COURT OF CLAIMS

No. 774-71

HELEN MITCHELL, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

ANSWER

[Filed June 22, 1972]

First Defense

Petitioners fail to state a claim upon which relief can be granted.

Second Defense

Petitioners allegations are so vague and general that the petition fails to meet the requirements set out in Rule 35, and therefore, the petition fails to state a claim upon which relief can be granted.

Third Defense

The petition fails to state a claim within the jurisdiction of this Court as to those claims alleged to have accrued prior to October 18, 1965, as such claims are barred by limitations. 28 U.S.C. 2501.

Fourth Defense

The petition fails to state a claim within the jurisdiction of this Court as to those claims that accrued prior to August 13, 1946. 28 U.S.C. 1505.

Fifth Defense

The petition is defective for misjoinder of issues as the issues presented are not common to all the plaintiffs.

Sixth Defense

The petition is defective for misjoinder of parties.

Seventh Defense

For answer to the numbered paragraphs of the petition, defendant asserts that:

1. The allegations in the introductory paragraph are conclusions of law requiring no answer.
2. Defendant admits the allegations in paragraph 1.
3. Defendant admits the allegations in paragraph 2, except defendant admits in the last sentence of paragraph 2 that the committee has only been recognized as spokesman for the allottees and has not been recognized as the representative of the allottees.
4. The allegations in paragraph 3 are conclusions of law requiring no answer.
5. Defendant denies the allegations in paragraph 4. For further answer to paragraph 4, the defendant alleges that the only parties plaintiff are those named at the date of filing the petition or those individuals who subsequently enter pursuant to the Court's order providing for giving of notice of class action.
6. Defendant admits the allegations in paragraph 5 and 6.
7. Defendant admits the allegations in paragraph 7.
8. Defendant admits the allegations in paragraph 8.
9. Defendant admits the allegations in paragraph 9.
10. The allegations in paragraph 10 as to the existence of a fiduciary duty and the alleged basis for such a duty are conclusions of law requiring no answer. Defendant does admit the existence of the various statutes and regulations cited.
11. Defendant admits the allegations in paragraph 11 that the Tribe owns a few small parcels of land, totalling about 4,000 acres, but the remainder of the allegations in paragraph 11 are conclusions of law requiring no answer.
12. Defendant admits the allegations in paragraph 12, except the first and last sentences are conclusions of law requiring no answer. Further, defendant is without knowledge or information sufficient to form a belief as to whether some of the "allottees do not live on or within the required distance of the Reservation and so are ineligible to be members."

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Defendant denies the allegation in paragraph 14.

15. Defendant admits the allegations in paragraph 15.

16. Defendant admits the allegations in paragraph 16 that the defendant obtained powers of attorney from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long term logging contracts, but defendant denies the remainder of the allegations in paragraph 16.

17. Defendant admits the allegations in paragraph 17.

18. Defendant admits the allegations in paragraph 18, exception defendant denies that the contract was in "essential respects similar to the Taholah Unit Contract."

19. Defendant denies the allegations in paragraph 19, except defendant admits the allegations in the second sentence of paragraph 19.

20. Defendant denies the allegations in paragraph 20.

Respectfully submitted,

KENT FRIZZELL
Assistant Attorney General

HERMAN L. FUSSELL
Attorney, Department of Justice
Room 2138, Telephone 739-2741
Washington, D.C. 20530

Attorneys for Defendant

IN THE UNITED STATES COURT OF CLAIMS

No. 774-71

HELEN MITCHELL, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

AMENDED ANSWER TO PLAINTIFFS' FIRST AMENDED PETITION

[Filed Oct. 13, 1976]

The defendant, as an amendment to its Answer to Plaintiffs' Petition, and without waiving the defendant's contention that the plaintiffs have no right to a general accounting in Docket No. 775-71, alleges:

1. The defendant has, from time to time, expended various sums of money out of many appropriations on behalf of the plaintiff Indian tribe and on behalf of allottee plaintiffs and for the benefit of the plaintiff tribe and the allottee plaintiffs, to provide items and services and for varied purposes, the amount of which is unknown to the defendant at this time.

2. The answer will be further amended if it should be determined that the plaintiff tribe and the allottee plaintiffs are entitled to maintain this suit and that the defendant is liable to the plaintiff tribe and any of the allottee plaintiffs in any amount.

3. The answer will also be further amended when the amount of the above-referred to disbursements becomes known so that such amount may be set-off as gratuitous expenditures, as reimbursable expenditures incurred in the care of the forests on the Quinault Reservation, and as disbursements for the welfare of the plaintiff tribe and of the allottee plaintiffs, and in mitigation of damages, should any damages be awarded the plaintiffs herein.

4. Should the Court find any sum due in favor of the plaintiff tribe or the plaintiff allottees, said plaintiffs are not entitled to any interest thereon.

Respectfully submitted,

PETER R. TAFT
Assistant Attorney General

DAVID M. MARSHALL
Attorney
Attorneys for Defendant

By: _____
Attorney

IN THE UNITED STATES COURT OF CLAIMS

No. 775-71

HELEN MITCHELL, an allottee of the Quinault Reservation, and 530 other allottees listed on Attachment A hereto; the QUINAULT ALLOTTEES ASSOCIATION; and the QUINAULT TRIBE; on their own behalves and on behalf of ALL ALLOTTEES of the Quinault Reservation or their successors, PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, DEFENDANT

PETITION

[Filed Oct. 18, 1971]

(Accounting Claims)

This is an action to recover money damages from the defendant, arising from its management and disposition of the property of the plaintiffs. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1505.

1. Plaintiff Helen Mitchell and the 530 other plaintiffs named in Attachment A hereto are Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are the successors of such Indians. Plaintiffs are predominantly Quinault Indians, but also include Queets, Quileute, Hoh, Chehalis, Cowlitz, Chinook and other Indians.

2. The Quinault Allottees Association is an unincorporated association consisting of the allottees described in the preceding paragraph. The Association was formed in 1968 for the purpose of representing the interests of all of the allottees of the Quinault Reservation, or their successors. Plaintiffs know the names of some 1,450 of the original allottees or their successors, but there are many more names which plaintiffs do not know. The Association's governing body is the Quinault Allottees Committee, and Chairman of the Committee is plaintiff Helen Mitchell. The Secretary of the Interior has from

time to time recognized the Committee as representing all of the allottees of the Quinault Reservation.

3. The Quinault Tribe is an Indian Tribe, which has been in existence since time immemorial, and which has sovereignty over the Quinault Reservation. Its basic relationship with the defendant is established by the Treaty of Olympia, paragraph 5 below.

4. The class on whose behalf the plaintiffs sue consists of all allottees of the Quinault Reservation, or their successors, plus the Quinault Tribe in its capacity of owner of land and timber damaged by defendant's conduct as alleged herein. The class is so numerous that joinder of all members is impractical; the questions of law as to liability are common to the entire class; the claims and defenses of the plaintiffs are typical of the claims and defenses of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions taken by individual members of the class would create a risk both of inconsistent and varying adjudications with respect to individual members of the class establishing incompatible judicial standards, and of prejudicing individual members of the class whose interests would be substantially impaired by the result in this suit. Further, the interests of those members of the class who are not named plaintiffs cannot as a practical matter be adjudicated with finality except through a class action. Further, the claims presented herein arise out of the management of the Quinault Forest, which the defendant managed in many respects as a single entity.

5. Under the Treaty of Olympia, 12 Stat. 971 (1859), the Quinault and Quileute Tribes ceded all their land in the country theretofore occupied by them on the Pacific coast of Washington. The Treaty provided that:

> "Article II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of lands sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs agent. . . .
>
> "* * *
>
> "ARTICLE VI. The President . . . may consolidate them with other friendly tribes or bands . . . and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable."

6. The sixth article of the Treaty with the Omahas, 10 Stat. 1043, 1044-5 (1854), referred to in the Quinault Treaty, provides as follows:

> "ARTICLE 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possesion and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on

> the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land. . . . No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

The State of Washington was admitted into the Union in 1889, 25 Stat. 676. The state legislature has not removed the restrictions provided for in the above-quoted Article 6, nor has Congress consented to the removal of the restrictions.

7. On November 4, 1873, 1 Kapp. 923, President U. S. Grant by Executive Order established the Quinault Reservation with its present boundaries "for the use of the Quinaielt, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast. . . ." Since 1874 the Quinault Indian Reservation has retained its outer boundaries without change. It comprises some 200,000 acres, including all of Lake Quinault and 20 miles of tidelands along the ocean, and was originally heavily forested throughout.

8. The Tribe remained the sole owner of the Reservation until about 1905. Then, pursuant to the above-quoted Treaty and Executive Order, the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. § 331, and the Act of March 4, 1911, 36 Stat. 1345, defendant began to allot the Reservation to the members of the Tribe and other Indians. By 1933, the Reservation was completely allotted. There were over 2,300 allotments, typically 80 acres in size, and covered with valuable timber.

9. Each allottee received a deed, signed in the name of the President of the United States, containing language pursuant to Sec. 5 of the General Allotment Act, as amended, 25 U.S.C. § 348, that the United States will hold the allotment for the period of 25 years,

> ". . . in trust for the sole use and benefit of the Indian . . . or in case of his decease, of his heirs . . . and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever . . . ."

The trust period of 25 years was extended from time to time, see 25 U.S.C. § 391, and then extended indefinitely by Sec. 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 462.

10. Pursuant to the Quinault Treaty, the Executive Order of 1873, the General Allotment Act of 1887, and the Act of March 4, 1911, the defendant has a fiduciary duty to the allottees to manage their lands and timber prudently, until the trust period ends. See also the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 ff., especially § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 41 Stat. 415 (1920), 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

11. The Tribe owns a few small parcels of land, totalling about 4,000 acres, some as a result of restorations

by Congress, see, *e.e.*, 73 Stat. 427 and 76 Stat. 913. All of the land and timber owned by the Tribe is held in trust by the defendant for the Tribe, and so long as the trust continues, the defendant has a fiduciary duty to manage such lands and timber prudently. This duty is recognized in 60 Stat. at 1055-6 (1946), Sec. 24; and see 25 U.S.C. § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

12. The Indian sovereignty over the Reservation lies in the Quinault Tribe. The membership of the Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of at least one-quarter Quileute, Hoh, Chehalis, Chinook or Cowlitz blood who own a trust interest in an allotment on the Reservation, and who reside on or near the Reservation). Many allottees are blood or affiliated members of the Tribe. However, many other allottees do not live on or within the required distance of the Reservation and so are ineligible to be members.

13. The allottees as such were totally unorganized until 1968. The Tribe has always been organized, but it could not, and did not, represent the allottees.

14. The typical allottee, for lack of education, experienced and capacity to understand, relies completely on the defendant to manage his land and timber prudently, and to obtain the fair market price therefor when sold. The defendant is well aware of this reliance.

15. In 1916, after the Reservation was partially allotted, the defendant caused the timber on the Reservation to be inventoried, and logging began shortly after. The first long-term logging contract was let in 1920. By 1950, the southern half of the Reservation had been logged or was in the process of being logged under long-term contracts. Still unlogged were the Queets, Taholah and Crane Creek Units, comprising about 45,000, 30,000

and 35,000 acres respectively, in the northern half of the Reservation.

16. Beginning around 1946, in order to arrange for the logging of these three remaining units, the defendant set about gathering powers of attorneys from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long-term logging contracts. Many allottees were told or encouraged to believe that unless they signed the powers, their timber would be left out of the logging contracts, and the Secretary might not permit it to be logged in their lifetimes. The defendant's employees obtained signatures without adequate or accurate explanation of the facts and the alternatives available, and with misrepresentation, and with undue influence. Plaintiffs were incapable of making an intelligent decision whether to sign the powers, and signed only in reliance on defendant's representation that it would be in their best interests to do so.

17. Pursuant to the aforesaid powers of attorneys and to its powers as trustee of the plaintiffs' land, the defendant, acting through the Superintendent of the Taholah Indian Agency, entered into a contract with the Aloha Lumber Company on April 26, 1950, covering the Taholah Unit. Under this contract, Aloha purchased the timber on all allotments within the boundaries of the Taholah Unit and for which the Secretary had a power of attorney, and agreed to log it over the next 29 years. This contract will terminate in 1979.

18. The Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952. It was in essential respects similar to the Taholah Unit contract, except that the term was 34 years, so that it will terminate in 1986.

19. The Queets Unit, comprising about 45,000 acres, was put up for bids, but no bids were received. Consequently, no long-term logging contract was let covering that unit, and logging since 1950 has been on an allotment-by-allotment basis. The defendant encouraged individual allottees in that unit to sell their land in fee, and discouraged or prohibited sales of timber only, and

as a consequence, only about 5,700 acres of trust allotments with merchantable timber still remain in the Queets Unit, the rest having been sold to non-Indians.

20. The Act of February 14, 1920, 41 Stat. 415, 25 U.S.C. § 413, provides as follows:

> "The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, leases, or other sources of revenue: *Provided*, That the amounts so collected shall be covered into the Treasury as miscellaneous receipts, except when the expenses of the work are paid from Indian tribal funds, in which event they shall be credited to such funds."

The Secretary's regulations, 25 C.F.R. § 141.18, provide:

> "In sales of timber from either allotted or unalloted lands, a reasonable deduction shall be made from the gross proceeds to cover in whole or in part the cost of managing and protecting the forest lands, including the cost of timber sale administration, but not including the costs that are paid from funds appropriated specifically for fire suppression or forest pest control. Unless special instructions have been given by the Secretary as to the amount of the deduction or the manner in which it is to be made, there shall be deducted 10 percent of the gross amount received for timber sold under regular supervision, and 5 percent when the timber is sold in such a manner that little administrative expense by the Indian Bureau is required. Service fees in lieu of administrative deductions shall be determined in a similar manner."

21. Since February 14, 1920, whenever a sale of timber from trust allotments or tribal trust land on the Quinault Reservation has taken place, the Secretary has collected from the proceeds of sale an administrative

charge. Currently the charge is 10%, except where an Indian arranges for sale of his own timber, in which case the charge is currently 5%.

COUNT I

22. Over the years since 1920, defendant has received many payments from non-Indians for the purchase of plaintiffs' land and timber, and has never furnished a money accounting of the said payments. Pursuant to the fiduciary duty alleged in paragraphs 10 and 11 above, plaintiffs are entitled to such an accounting.

COUNT II

23. The amounts collected by the defendant from sales of plaintiffs' timber have greatly exceeded defendant's properly allocated costs, and the excess should be refunded to the plaintiffs. Plaintiffs are entitled to an accounting of the fees collected by defendant, and of the administrative costs claimed by defendant to be properly allocated thereto.

24. Pursuant to Rule 35(b), plaintiffs state that no action on this claim has been taken by Congress or by any other body. In Docket No. 524-69 Horton Capoeman, a Quinault allottee, claimed refund of the administrative charges, but his case was disposed of on the statute of limitations, without reaching the merits. See Opinion, April 16, 1971. Another petition making the same claim was filed in March, 1971, Docket No. 102-71, on behalf of the same class as herein. It is still pending.

WHEREFORE, plaintiffs demand the accountings described in Counts I and II.

Respectfully submitted,

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Jerry C. Straus
Charles H. Gibbs, Jr.

Of Counsel

(Note: Pursuant to an agreement between counsel, Attachment A to this Petition, listing the names of individual plaintiffs, has not been reproduced in this Appendix.)

IN THE UNITED STATES COURT OF CLAIMS

Docket No. 775-71

HELEN MITCHELL, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

FIRST AMENDED PETITION

[Filed Oct. 2, 1972]

(Accounting Claims)

This is an action to recover money damages from the defendant, arising from its management and disposition of the property of the plaintiffs. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1505.

1. Plaintiff Helen Mitchell and the 530 other plaintiffs named in Attachment A hereto are Indians who received trust allotments on the Quinault Indian Reservation, Washington, or are the successors of such Indians. Plaintiffs are predominantly Quinault Indians, but also include Queets, Quileute, Hoh, Chehalis, Cowlitz, Chinook and other Indians.

2. The Quinault Allottees Association is an unincorporated association consisting of the allottees described in the preceding paragraph. The Association was formed in 1968 for the purpose of representing the interests of all of the allottees of the Quinault Reservation, or their successors. Plaintiffs know the names of some 1,450 of the original allottees or their successors, but there are many more names which plaintiffs do not know. The Association's governing body is the Quinault Allottees Committee, and Chairman of the Committee is plaintiff Helen Mitchell. The Secretary of the Interior has from time to time recognized the Committee as representing all of the allottees of the Quinault Reservation.

3. The Quinault Tribe is an Indian Tribe, which has been in existence since time immemorial, and which has

sovereignty over the Quinault Reservation. Its basic relationship with the defendant is established by the Treaty of Olympia, paragraph 5 below.

4. The class on whose behalf the plaintiffs sue consists of all allottees of the Quinault Reservation, or their successors, plus the Quinault Tribe in its capacity of owner of land and timber damaged by defendant's conduct as alleged herein. The class is so numerous that joinder of all members is impractical; the questions of law as to liability are common to the entire class; the claims and defenses of the plaintiffs are typical of the claims and defenses of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. Further, the prosecution of separate actions by individual members of the class would create a risk both of inconsistent and varying adjudications with respect to individual members of the class establishing incompatible judicial standards, and of prejudicing individual members of the class whose interests would be substantially impaired by the result in this suit. Further, the interests of those members of the class who are not named plaintiffs cannot as a practical matter be adjudicated with finality except through a class astion. Further, the claims presented herein arose out of the management of the Quinault Forest, which the defendant managed in many respects as a single entity.

5. Under the Treaty of Olympia, 12 Stat. 971 (1859), the Quinault and Quileute Tribes ceded all their land in the country theretofore occupied by them on the Pacific coast of Washington. The Treaty provided that:

> "Article II. There shall, however, be reserved, for the use and occupation of the tribes and bands aforesaid, a tract or tracts of lands sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use, and no white man shall be permitted to reside thereon without permission of the tribe and of the superintendent of Indian Affairs or Indian agent. . . .
>
> * * * *

> "ARTICLE VI. The President . . . may consolidate them with other friendly tribes or bands . . . and he may further, at his discretion, cause the whole or any portion of the lands to be reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable."

6. The sixth article of the Treaty with the Omahas, 10 Stat. 1043, 1044-5 (1854), referred to in the Quinault Treaty, provides as follows:

> "ARTICLE 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section/ to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased

for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land. . . . No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

The State of Washington was admitted into the Union in 1889, 25 Stat. 676. The state legislature has not removed the restrictions provided for in the above-quoted Article 6, nor has Congress consented to the removal of the restrictions.

7. On November 4, 1873, 1 Kapp. 923, President U. S. Grant by Executive Order established the Quinault Reservation with its present boundaries "for the use of the Quinault, Quillehute, Hoh, Quit, and other tribes of fish-eating Indians on the Pacific Coast. . . ." Since 1874 the Quinault Indian Reservation has retained its outer boundaries without change. It comprises some 200,000 acres, including all of Lake Quinault and 20 miles of tidelands along the ocean, and was originally heavily forested throughout.

8. The Tribe remained the sole owner of the Reservation until about 1905. Then, pursuant to the above-quoted Treaty and Executive Order, the General Allotment Act of 1887, 24 Stat. 388, 25 U.S.C. § 331, and

the Act of March 4, 1911, 36 Stat. 1345, defendant begant to allot the Reservation to the members of the Tribe and other Indians. By 1933, the Reservation was completely allotted. There were over 2,300 allotments, typically 80 acres in size, and covered with valuable timber.

9. Each allotttee received a deed, signed in the name of the President of the United States, containing language pursuant to Sec. 5 of the General Allotment Act, as amended, 25 U.S.C. § 348, that the United States will hold the allotment for the period of 25 years,

> ". . . in trust for the sole use and benefit of the Indian . . . or in case of his decease, of his heirs . . . and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. . . ."

The trust period of 25 years was extended from time to time, see 25 U.S.C. § 391, and then extended indefinitely by Sec. 2 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. § 462.

10. Pursuant to the Quinault Treaty, the Executive Order of 1873, the General Allotment Act of 1887, and the Act of March 4, 1911, the defendant has a fiduciary duty to the allottees to manage their lands and timber prudently, until the trust period ends. See also the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §§ 461 ff., especially § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 41 Stat. 415 (1920), 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

11. The Tribe owns a few small parcels of land, totalling about 4,000 acres, some as a result of restorations by Congress, see, *e.g.*, 73 Stat. 427 and 76 Stat. 913. All of the land and timber owned by the Tribe is held in trust by the defendant for the Tribe, and so long as the

trust continues, the defendant has a fiduciary duty to manage such lands and timber prudently. This duty is recognized in 60 Stat. at 1055-6 (1946), Sec. 24; and see 25 U.S.C. § 466, directing the Secretary of the Interior to make regulations for the management of Indian forestry units on a sustained yield basis; and 25 U.S.C. § 413, authorizing the Secretary to collect fees for defendant's services. Defendant's duty is in part recognized and embodied in the Secretary's Forestry Regulations, 25 C.F.R. Part 141.

12. The Indian sovereignty over the Reservation lies in the Quinault Tribe. The membership of the Tribe consists of "blood members" (persons of at least one-quarter Quinault or Queets blood) and "affiliated" members (persons of at least one-quarter Quileute, Hoh, Chehalis, Chinook or Cowlitz blood who own a trust interest in an allotment on the Reservation, and who reside on or near the Reservation). Many allottees are blood or affiliated members of the Tribe. However, many other allottees do not live on or within the required distance of the Reservation and so are ineligible to be members.

13. The allottees as such were totally unorganized until 1968. The Tribe has always been organized, but it could not, and did not, represent the allottees.

14. The typical allottee, for lack of education, experience and capacity to understand, relies completely on the defendant to manage this land and timber prudently, and to obtain the fair market price therefor when sold. The defendant is well aware of this reliance.

15. In 1916, after the Reservation was partially allotted, the defendant caused the timber on the Reservation to be inventoried, and logging began shortly after. The first long-term logging contract was let in 1920. By 1950, the southern half of the Reservation had been logged or was in the process of being logged under long-term contracts. Still unlogged were the Queets, Taholah and Crane Creek Units, comprising about 45,000, 30,000 and 35,000 acres respectively, in the southern half of the Reservation.

16. Beginning around 1946, in order to arrange for the logging of these three remaining units, the defendant set about gathering powers of attorneys from the owners of allotments in the Queets, Taholah, and Crane Creek Units, authorizing the defendant to enter into long-term logging contracts. Many allottees were told or encouraged to believe that unless they signed the powers, their timber would be left out of the logging contracts, and the Secretary might not permit it to be logged in their lifetimes. The defendant's employees obtained signatures without adequate or accurate explanation of the facts and the alternatives available, and with misrepresentation, and with undue influence. Plaintiffs were incapable of making an intelligent decision whether to sign the powers, and signed only in reliance on defendant's representation that it would be in their best interests to do so.

17. Pursuant to the aforesaid powers of attorneys and to its powers as trustee of the plaintiffs' land, the defendant, acting through the Superintendent of the Taholah Indian Agency, entered into a contract with the Aloha Lumber Company on April 26, 1950, covering the Taholah Unit. Under this contract, Aloha purchased the timber on all allotments within the boundaries of the Taholah Unit and for which the Secretary had a power of attorney, and agreed to log it over the next 29 years. This contract will terminate in 1979.

18. The Aloha Lumber Company contract established stumpage rates for different species of trees and provided for the periodic adjustment of such rates for the duration of the contract's life. In December, 1965, the Commissioner of Indian Affairs established a revised schedule of increased stumpage prices. Aloha's objections were pursued through administrative and judicial channels until an out-of-court settlement was negotiated in 1970. During the course of this dispute, Aloha paid for the timber in accordance with the increased rate schedules. However, the Secretary ordered that, pending final disposition of Aloha's special, increased revenue derived from Aloha's compliance was not to be distributed. The

disputed funds were paid into a special account held in escrow by defendant for the timber owners.

19. The Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952. It was in essential respects similar to the Taholah Unit contract, except that the term was 34 years, so that it will terminate in 1986.

20. The Queets Unit, comprising about 45,000 acres, was put up for bids, but no bids were received. Consequenty, no long-term logging contract was let covering that unit, and logging since 1950 has been on an allotment-by-allotment basis. The defendant encouraged individual allottees in that unit to sell their land in fee, and discouraged or prohibited sales of timber only, and as a consequence, only about 5,700 acres of trust allotments with merchantable timber still remain in the Queets Unit, the rest having been sold to non-Indians.

21. The Act of February 14, 1920, 41 Stat. 415, 25 U.S.C. § 413, provides as follows:

> "The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to collect reasonable fees to cover the cost of any and all work performed for Indian tribes or for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, leases, or oher sources of revenue: *Provided*, That the amounts so collected shall be covered into the Treasury as miscellaneous receipts, except when the expenses of the work are paid from Indian tribal funds, in which event they shall be credited to such funds."

The Secretary's regulations, 25 C.F.R. § 141.18, provide:

> "In sales of timber from either allotted or unallotted lands, a reasonable deduction shall be made from the gross proceeds to cover in whole or in part the cost of managing and protecting the forest lands, including the cost of timber sale administration, but not including the costs that are paid from funds appropriated specifically for fire suppression or forest pest control. Unless special instructions have been given by the Secretary as to the amount of the deduction or the manner in which it is to be made, there shall be deducted 10 percent of the gross amount received for timber sold under regular supervision, and 5 percent when the timber is sold in such a manner that little administrative expense by the Indian Bureau is required. Service fees in lieu of administrative deductions shall be determined in a similar manner."

22. Since February 14, 1920, whenever a sale of timber from trust allotments or tribal trust land on the Quinault Reservation has taken place, the Secretary has collected from the proceeds of sale an administrative charge. Currently the charge is 10%, except where an Indian arranges for sale of his own timber, in which case the charge is currently 5%.

COUNT I

23. Defendant has at all times been under a duty, as guardian and trustee of plaintiffs and their property, to prudently manage and administer all sums of plaintiffs' money held by defendant, whether by way of principal or interest, and plaintiffs have been damaged to the extent that defendant has failed to carry out this duty. In particular, defendant has breached this fiduciary duty to plaintiffs in the following instances:

A. The funds held in escrow by defendant in 1965-1970 under the Aloha Lumber and ITT Rayonier contracts, pending resolution of price disputes, were not invested or credited with a reasonable and proper rate of interest.

B. Defendant is under a duty to insure that all funds held in trust for the allottees are distributed exclusively to individuals who are competent to handle such sums in a competitive society. Upon information and belief, plaintiffs allege that, under the logging contracts described above, defendant has failed to follow properly the special procedures established by its own agencies for determining such competency. Consequently, funds were disbursed to incompetent Indians who unwittingly

squandered or otherwise depleted their distributive shares in a manner wholly inconsistent with their health and general welfare.

C. Defendant has failed to prudently manage and administer funds held in trust for the Quinault Tribe, and for Indians who are *non compos mentis* or minors. Upon information and belief, plaintiffs allege that defendant has failed to credit these funds with a proper and reasonable rate of interest; that defendant has failed to cover these interest-bearing funds into the United States Treasury within 30 days of receipt; that defendant has failed to administer these funds in the most productive manner possible; that defendant has wrongfully charged these funds with expenditures for agency and administrative expenses which were the obligation of defendant to bear; that defendant has wrongfully held these funds in noninterest-bearing accounts before being expended or restored to interest-bearing status; that defendant has wrongfully made expenditures with interest-bearing funds when noninterest-bearing funds were available; and that defendant has otherwise mismanaged these funds in numerous ways which shall become apparent as the proofs develop.

D. Defendant is under a duty to disburse money collected for or on behalf of plaintiffs, under the logging contracts described above, quickly and expeditiously. Upon information and belief, plaintiffs allege that defendant has, from time to time, breached this duty by withholding distributions for unreasonably long periods of time.

E. In the exercise of its fiduciary duties, defendant has collected or received, since 1920, various monies, including payments from non-Indians for the purchase of plaintiffs' land and timber, for or on behalf of plaintiffs' land and timber, for or on behalf of plaintiffs, or defendant itself has become liable to pay monies to or on behalf of plaintiffs. Defendant has failed to account for its management, handling and disposition of said monies and properties. As a result, plaintiffs have been damaged by having been deprived of the amount of money or value of other property, together with interest thereon, which

may be shown to be owing to plaintiffs upon a proper accounting in accordance with the fiduciary duties and the liabilities herein set forth.

COUNT II

24. The administrative charges collected by defendant from sales of plaintiffs' timber have greatly exceeded defendant's properly allocated costs. Plaintiffs are entitled to a refund for the full amount of defendant's unjust enrichment, *i.e.*, the total of administrative fees less administrative costs. As an incident thereto, and in aid of a proper determination of the full extent of defendant's liability to plaintiffs, plaintiffs are entitled to an accounting of the fees collected by defendant, and of the administrative costs claimed by defendant to be properly allocable.

25. Pursuant to Rule 35(b), plaintiffs state that no action on this claim has been taken by Congress or by any other body. In Docket No. 524-69 Horton Capoeman, a Quinault allottee, claimed refund of the administrative charges, but his case was disposed of on the statute of limitations, without reaching the merits. See Opinion, April 16, 1971. Another petition making the same claim was filed in March, 1971, Docket No. 102-71, on behalf of the same class as herein. It is still pending.

WHEREFORE, plaintiffs are entitled to recover such damages as the proofs may show are proper and as their interests may appear, together with interest as such or as part of just compensation; the accountings described in Counts I and II which are necessary in de-

termining the full extent of defendant's liability, and such other relief as this Court may deem proper.

Respectfully submitted,

/s/ Charles A. Hobbs
CHARLES A. HOBBS
Attorney of Record for Plaintiffs
1616 H Street, N.W.
Washington, D.C. 20006

WILKINSON, CRAGUN & BARKER
R. Anthony Rogers
Alan I. Rubinstein
of Counsel

(Note: Pursuant to an agreement between counsel, Attachment A to this Petition, listing the names of individual plaintiffs, has not been reproduced in this Appendix.)

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IN THE UNITED STATES COURT OF CLAIMS

No. 775-71

[Filed Feb. 2, 1973]

HELEN MITCHELL, ET AL.

v.

THE UNITED STATES

Before COWEN, *Chief Judge*, DAVIS, SKELTON, NICHOLS, KUNZIG and BENNETT, *Judges*.

ORDER

This case comes before the court on defendant's motion, filed November 1, 1972, to dismiss the amended petition. Upon consideration thereof, together with the opposition thereto, without oral argument, on the basis of the decision by this court in *Klamath & Modoc Tribes* v. *United States*, 174 Ct.Cl. 483 (1966).

IT IS ORDERED that defendant's said motion to dismiss be and the same is granted and the petition is dismissed to the extent that it asks for an accounting by the defendant before the defendant's liability has been ascertained. The defendant's motion to dismiss is otherwise denied.

BY THE COURT
Chief Judge

IN THE UNITED STATES COURT OF CLAIMS

No. 775-71

HELEN MITCHELL, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

ANSWER TO PLAINTIFFS' FIRST AMENDED PETITION

[Filed Mar. 30, 1973]

First Defense

Petitioners fail to state a claim upon which relief can be granted.

Second Defense

Petitioners allegations are so vague and general that the petition fails to meet the requirements set out in Rule 35, and therefore, the petition fails to state a claim upon which relief can be granted.

Third Defense

The petition fails to state a claim within the jurisdiction of this Court as to those claims alleged to have accrued prior to October 18, 1965, as such claims are barred by limitations, 28 U.S.C. 2501.

Fourth Defense

The petition fails to state a claim within the jurisdiction of this Court as to those claims that accrued prior to August 13, 1946, 28 U.S.C. 1505.

Fifth Defense

The petition is defective for misjoinder of issues as the issues presented are not common to all the plaintiffs.

Sixth Defense

The petition is defective for misjoinder of parties.

Seventh Defense

For answer to the numbered paragraphs of the petition, defendant asserts that:

1. The allegations in the introductory paragraph are conclusions of law requiring no answer.
2. Defendant admits the allegations in paragraph 1.
3. Defendant admits the allegations in paragraph 2, except defendant admits in the last sentence of paragraph 2 that the committee has only been recognized as spokesman for the allottees and has not been recognized as the representative of the allottees.
4. The allegations in paragraph 3 are conclusions of law requiring no answer.
5. Defendant denies the allegations in paragraph 4. For further answer to paragraph 4, the defendant alleges that the only parties plaintiff are those named at the date of filing the petition or those individuals who subsequently enter pursuant to the Court's order providing for giving of notice of class action.
6. Defendant admits the allegations in paragraph 5 and 6.
7. Defendant admits the allegations in paragraph 7.
8. Defendant admits the allegations in paragraph 8.
9. Defendant admits the allegations in paragraph 9.
10. The allegations in paragraph 10 as to the existence of a fiduciary duty and the alleged basis for such a duty are conclusions of law requiring no answer. Defendant does admit the existence of the various statutes and regulations cited.
11. Defendant admits the allegations in paragraph 11 that the Tribe owns a few small parcels of land, totalling about 4,000 acres, but the remainder of the allegations in paragraph 11 are conclusions of law requiring no answer.
12. Defendant admits the allegations in paragraph 12, except the first and last sentences are conclusions of law requiring no answer. Further, defendant is without

knowledge or information sufficient to form a belief as to whether some of the "allottees do not live on or within the required distance of the Reservation and so are ineligible to be members."

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Defendant denies the allegations in paragraph 14.

15. Defendant admits the allegations in paragraph 15.

16. Defendant admits the allegation in paragraph 16 that the defendant obtained power of attorney from the owners of allotments in the Queets, Taholah, and Crane Creek Units authorizing the defendant to enter into long term logging contracts, but defendant denies the remainder of the allegations in paragraph 16.

17. Defendant admits the allegations in paragraph 17.

18. Defendant admits the allegation in paragraph 18 that in accordance with an order from the Secretary of the Interior, The Aloha Lumber Company paid the disputed increased stumpage rates to a special account held in escrow by the Secretary of the Interior. However, these funds have since been distributed together with interest. Defendant denies the remainder of the allegations in paragraph 18.

19. Defendant admits the allegation in paragraph 19 that the Crane Creek Unit contract was entered into with Rayonier, Inc., on June 18, 1952, and that the contract was for a 34 year term terminating in 1986. Defendant denies the allegation in paragraph 19 that the contract was in "essential respects similar to the Taholah Unit contract."

20. Defendant denies the allegations in paragraph 20, except defendant admits that no long-term contract was let covering the Queets Unit, and that logging since 1950 has been on an allotment-by-allotment basis.

21. Defendant admits the allegations in paragraph 21 in that such a statute and such a regulation exist, but denies that the statute and regulation are verbatim that which appears in paragraph 21.

22. Defendant denies the allegations in paragraph 22, except that defendant admits that the current charge

for an Indian who arranges for the sale of his own timber is 5 percent.

23. The allegation in paragraph 23 as to the existence of a fiduciary duty is a conclusion of law requiring no answer. Defendant denies the remainder of the allegations in paragraph 23, and its subparagraphs A, B, C, D, and E. For further answer to paragraph 23 E, the defendant alleges that the Court of Claims, by Order dated February 2, 1973, granted the defendant's Motion to Dismiss as to the accounting procedure.

24. The allegations in the first two sentences of paragraph 24 are conclusions of law requiring no answer. As to the third sentence in paragraph 24, to the extent that plaintiffs ask for an accounting by the defendant before the defendant's liability, if any, has been ascertained, the Court of Claims, by Order dated February 2, 1973, granted the defendant's Motion to Dismiss.

25. The allegations in paragraph 25 are to meet the requirements of Rule 35(b) and no response appears necessary.

Respectfully submitted,

KENT FRIZZELL
Assistant Attorney General

JOHN H. GERMERAAD
Attorney
Department of Justice
Attorneys for Defendant

By _____
Attorney

IN THE UNITED STATES COURT OF CLAIMS

No. 775-71

HELEN MITCHELL, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

AMENDED ANSWER TO PLAINTIFFS' FIRST AMENDED PETITION

[Filed Oct. 13, 1976]

The defendant, as an amendment to its Answer to Plaintiffs' First Amended Petition, and without waiving the defendant's contention that the plaintiffs have no right to a general accounting herein, alleges:

1. The defendant has, from time to time, expended various sums of money out of many appropriations on behalf of the plaintiff Indian Tribe and on behalf of allottee plaintiffs and for the benefit of the plaintiff tribe and the allottee plaintiffs, to provide various items and services and for varied purposes, the amount of which is unknown to the defendant at this time.

2. The answer will be further amended if it should be determined that the plaintiff tribe and the allottee plaintiffs are entitled to maintain this suit and that the defendant is liable to the plaintiff tribe and any of the allottee plaintiffs in any amount.

3. The answer will also be further amended when the amount of the above-referred to disbursements becomes known so that such amount may be set-off as gratuitous expenditures, as reimbursable expenditures incurred in the care of the forests on the Quinault Reservation, and as disbursements for the welfare of the plaintiff tribe and of the allottee plaintiffs, and in mitigation of damages, should any damages be awarded the plaintiffs herein.

4. Should the Court find any sum due in favor of the plaintiff tribe or the plaintiff allottees, said plaintiffs are not entitled to any interest thereon.

Respectfully submitted,

PETER R. TAFT
Assistant Attorney General

DAVID M. MARSHALL
Attorney
Attorneys for Defendant

By: /s/ David M. Marshall
Attorney

IN THE UNITED STATES COURT OF CLAIMS

Docket Nos. 772-71, 773-71, 774-71, 775-71

HELEN MITCHELL, ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

MOTION TO DISMISS

[Filed Sept. 30, 1977]

The defendant, the United States of America, moves, pursuant to Rule 38(b), to dismiss the petitions for lack of jurisdiction of the subject matter. Defendant states:

1. As to the claims of the individual allottee plaintiffs whether asserted by the allottees or in their behalf by either the Quinault Allottees Association or the Quinault Tribe, the court has no jurisdiction of the subject matter under 28 U.S.C. Sec. 1491 as to claims asserted by individual allottees or under 28 U.S.C. Sec. 1505 as to claims asserted by the Quinault Tribe.

2. As to the claims of the Quinault Tribe on its behalf, the Court has no jurisdiction under 28 U.S.C. Sec. 1505.

The attached Memorandum of Points and Authorities is made a part of this Motion.

Dated this 30th day of September, 1977.

Respectfully submitted,

JAMES W. MOORMAN
Assistant Attorney General

DAVID M. MARSHALL
Attorneys for Defendant

By: _____
Attorney

SUPREME COURT OF THE UNITED STATES

No. 78-1756

UNITED STATES, PETITIONER

v.

HELEN MITCHELL, ET AL.

ORDER ALLOWING CERTIORARI. Filed June 18, 1979.

The petition herein for a writ of certiorari to the United States Court of Claims is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1979 297016 32